IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Devendra Kumar Vs. State of Rajasthan
(D.B. Criminal Appeal No.1661/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 30-11-2002 in Sessions Case No.37/2002 passed by Shri Ramesh Chand Meena, RHJS, Additional Sessions Judge (Fast Track) No.2, Kota.

Date of Judgment: September 05, 2007.

PRESENT
HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Arvind Kumar Gupta] for the appellant.
Mr. Rinesh Gupta]
Mr. Harsh Saini]

Mr. B.N.Sandhu, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Dead bodies of two sisters namely Jyoti (aged 1 year) and Deepa (aged 4 years) were found lying dead in a pit. Both had ante mortem incised wounds over their tracheas and neck vessels. A shaving blade was also found lying near the dead bodies. The appellant was indicted for having committed the said crime before learned Additional Sessions Judge (Fast Track) No.2 Kota in Sessions Case No.37/2002. Learned Judge vide judgment dated November 30, 2002 convicted and sentenced the appellant as under:-

U/s.302 IPC:

To suffer imprisonment for life and fine of Rs.1000/-, in

default to further suffer rigorous imprisonment for one month.

U/s.364 IPC:

To suffer rigorous imprisonment for seven years and fine of Rs.1000/-, in default to further suffer rigorous imprisonment for one month.

Substantive sentences were ordered to run concurrently.

2. It is the prosecution case that on February 12, 2002 informant Sabu Lal (Pw.1) handed over a written report (Ex.P-1) at Police Station Mahaveer Nagar Kota to the effect that on February 11, 2002 around 3-4 PM the appellant who took Jyoti and Deepa on scooter for a ride, killed them by causing incised wounds over their necks and put their dead bodies in a pit. On that report a case under sections 302 and 365 IPC was registered and investigation commenced. The appellant was arrested, autopsy on dead bodies was performed, necessary memos were drawn and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2, Kota. Charges under sections 302 and 364 IPC were framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 14 witnesses. In the explanation under Sec.313 CrPC the appellant claimed innocence. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated above.

3. In the course of arguments we noticed that on April 29, 2002 learned counsel for the appellant moved an application seeking postponement of the trial on the ground of mental sickness of the appellant. Learned trial court thereafter proceeded to try the fact of alleged unsoundness and incapacity and after considering the medical evidence it was held vide order dated July 17, 2002 that although the appellant was

suffering from Re-active depression, it was a minor mental illness, therefore, the trial of the case could not be postponed. Para 8 of the order is relevant that reads as under:-

> "प्रार्थी अभियुक्त को रिएक्टिव डिप्रेशन से ग्रसित होना अवश्य बताया गया है जो कि किसी बुरे कृत्य को करने के पश्चात् पश्चाताप व आत्मग्लानि की वजह से उत्पन्न हुई वस्तुस्थिति है क्योंकि अभियुक्त ने दो अबोध बहिने जिनकी उम्र एक वर्ष व ढ़ाई वर्ष होना पायी गयी है का सर्विस ब्लेड से गला काटकर निर्मम हत्या करके जघन्य हत्याकाण्ड को अंजाम दिया गया है।"

Evidently learned trial court jumped to the conclusion on the basis of allegation made against the appellant in the charge sheet. How could such an observation that the appellant committed murder of two sisters, be made prior to completion of trial?

4. Coming to the scheme of Chapter XXV of the Code of Criminal Procedure it may be noticed that as a preliminary condition to the applicability of Section 329 it must appear to the court before which an accused is brought that the accused is of unsound mind and is consequently incapable of making his defence. If it does so appear, then the fact has to be tried and decided before calling upon the accused to stand his trial for the offence charged. Once court comes to the conclusion that accused deserved to be examined by Medical Expert, it cannot avoid the consequences of treading into second stage of the proceedings. The provisions of Section 329 are mandatory. In Pujappa v. The State (1991 Cri.L.J. 1189) Division Bench of Karnataka High Court held that conclusion or opinion of the court that the accused is or is not of unsound mind must be on the material placed on record. The Supreme Court in Vivian Rodrick v. The State of West Bengal [1969 CAR 301 (SC)] indicated that when the medical report is that an accused is of unsound mind, it is reasonable to infer that he is incapable of

making his defence and the court, in the circumstances is bound to afford him the same protection to which he would have been entitled had he been unsound mind at the time of the trial.

5. In Sarfu Khan Vs. State of Jharkhand (2004)13 SCC 460 it was propounded that in case, the appellant is lunatic, the procedure as laid down in Chapter 25 CrPC has to be followed. It would be for the appellant to make an appropriate motion before the trial court. On such a motion being made, the matter would be decided, keeping in view the provisions of the said chapter of CrPC.

6. In the case on hand Medical Board furnished Examination Report (Ex.C-1) which demonstrates that the appellant was suffering from re-active depression. We have also noticed that Dr. Rashmi Sanadhya, a Clinical Psychologist, found the appellant suffering from Depressive Psychopathology. Even Dr. Smt. Madhu Nijhawan (Cw.1) who was examined a court witness, did not depose that the appellant was completely cured. Learned trial court in our opinion committed illegality in dismissing the application moved on behalf of the appellant under Section 329 CrPC. Since the order dated July 17, 2002 was not based on the Examination Report (Ex.C-1) of the Medical Board alone and learned trial Court took aid of allegation made against the appellant in the charge sheet, the order deserves to be set aside and we accordingly quash it.

7. In the ultimate analysis we find that the trial proceeded while the appellant was patient of `Reactive Depression' and learned trial court misinterpreted the report of Medical Board. Since the trial proceeded and concluded without properly following the mandate of Section 329 CrPC, it

stands vitiated.

8. For the reasons aforementioned, the appeal is allowed and the impugned judgment dated November 30, 2002 stands set aside and the case is remanded back to learned Additional Sessions Judge (Fast Track) No.2 Kota for de-novo trial in accordance with the provisions of Chapter XXV of the Code of Criminal Procedure. We also direct that the appellant shall be medically examined by the Experts at Jaipur and unless he is completely cured his trial shall not proceed. The appellant is however at liberty to invoke the provisions contained in Section 330 of the Code of Criminal Procedure. Record of the case be sent back forthwith.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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